FOR MYSORE STATE

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closed
NRP
Supdt

HEALTH (195 3) Department.

Ms. SERIES.

G.O. NO. 3393, Health.

32

Dated 16th September 1953-

Call notice against 25/X/53

[Despatch Abstract.]

Licence - Udipi Municipality - Replacement of a 10 horse power Oil Engine by a 10 horse power electric motor in Lakshmi Mills - Refusal of permission - Resolution No.16 dated 31-3-52 - Cancellation of - Show cause notice - Issued.

LEGISLATIVE ASSEMBLY
* MADRAS *

SECRETARY
2695
HEALTH DEPARTMENT
Secy. Health
13/5

"Mukund Nivas"
UDIPI,
11th May, 1953

Sri A.B.Shetty,
Minister for Public Health,
Government of Madras,
MADRAS.

Dear Sri Shetty,

I have written to the Director of Public Health, a copy of which is enclosed herewith. A wrong has been done and I request, it be set right.

With regards,

Yours sincerely,

(T. ANANT PAI)

LEGISLATIVE ASSEMBLY
MADRAS

"Mukund Nivas"
UDIPI,
11th May, 1953.

3

Dr. Vishwanathan,
Director of Public Health,
MADRAS.

Dear Doctor,

I have pleasure in enclosing herewith a copy of an appeal preferred by Messrs. K.K.Shanbhag & Sons, Laxmi Mills, Udipi. The facts of the case are simple:-

1. They have been having an oil engine 10 H.P. for the last over 20 years even before the Municipality came into existence. Year by year, the Municipality has renewed the licence without raising any objection.

2. Only recently when they decided to change over to 10 H.P. electric motor in the place of the oil engine on account of improved position of electricity in Udipi, the Municipality which ought to have given the licence without any difficulty, in terms of the Government G.O. have turned down the request on account of some confusion in thought.

3. The party who had been advised by his lawyer to file a suit against the Municipality, has been persuaded by me to prefer an appeal and get their grievances redressed.

4. Not only has the Municipality turned down the request for the licence in spite of the best recommendations of the Health Officer, but the Health Officer has been made to issue an order asking the party to remove the oil engine forthwith without assigning any reasons therefor.

In the light of this, as the party has been compelled to close down the business, I request you to

(P.T.O)

4

intervene and see that necessary licence is issued to the party.

Yours sincerely,

(T. ANANT RAI)

Copy with best compliments to Hon'ble Sri A.B.Shetty,
Minister for Public Health,
Government of Madras.
MADRAS.

From

K. K. Shanbhogue & Sons,

Proprietors, Laxmi Mills,

U D I P I.

To

The Director of Public Health,

M A D R A S.

Sir,

Ref:- Municipal File No. R.O.C.G. 614/53 (2-5-53).

We may be permitted to submit the following facts for your sympathetic consideration and favourable orders:-

The Oil Engine of 10 H.P. was installed for coffee grinding in - - the premises of Door No. 10-1-127 (S.No. 109/12A of Shivalli Village) by our father late Sri. K. K. Shanbhogue under a licence obtained under Sec. 194 - of the Madras Local Boards Act, 1920 from the defunct Taluk Board of Udipi - or the District Board of South Kanara. Udipi was constituted into a Municipalit in the year 1935 and since then our father till his death in 1942 and we - - subsequently have been obtaining annual licences under Sec. 249 of the District Municipalities Act, 1920 every year for the working of the said engine of - - 10 H.P. without any objection raised by the Municipality.

In view of the orders issued in G.O.No. 4054 (Appendix 2 (a)) P.H. dated 3rd September 1940, we decided to replace the Oil engine by an electric Motor of the same horse power, viz., 10 H.P. and applied on 5-2-1953 for - - permission under Sec. 250 of the Madras District Municipalities Act 1920. - - The Municipal Health Officer inspected the site and recommended the grant of permission applied for as under G.O. such permission has to be granted as a matter of course. The application came up before the Council for consideration at its meeting held on 31-3-1953. At the Council Meeting, one of the - - - Councillors stated that he wanted that the applicant should produce the - - - original installation licence. We however urged that we were not in - - - possession of the original installation licence, that the old records of our

father had been either lost or moth-eaten, that we could not even get a copy from the District Board Office inspite of our best efforts, that it may be that the said licence was produced for the grant of the annual licence by - the Municipality originally and that it is either not returned to us or - - mislaid and that the fact that the Municipality has been granting us running licence every year ever since the beginning is the best evidence of the - - grant of the installation licence. Though most of the Councillors were - satified that the grounds urged by us for nonproduction of the original - - installation licence were true and genuine, when the matter was actually put to vote on account of the stiffness of the said one Councillor, the - application of the Petitioner was rejected by a majority of one vote, because, the voting went on, on party basis and the most of the members belonging - to the party of the member who raised the above objection were constrained to vote with him despite their feeling that the applicant was entitled to the licence applied for by him.

Notwithstanding the said rejection, on 1-4-1953 we again applied afresh for the grant of permission for the installation of an electric motor of 10 H.P. in the place of the oil engine which we proposed to dismantle,- because, we bona fide believed that once the oil engine is dismantled, the installation of electric motor would for all practical purposes be a frosh installation. This application was also recommended by the Municipal - - Health Officer and it came up for consideration of the Council at its - - special meeting held on 25-4-1953. The Council in which 8 members - - - including the Chairman were present was pleased to grant the licence of - course, the Chairman not participating. But, so far no licence has been - issued to us and it is said that this delay is due to the fact that it is doubted that the resolution of the Council at its special meeting held on 25-4-1953 was not valid as it did not receive the support of 10 members of the Council. We are advised that this view is not correct firstly because, the first resolution of the Council rejecting the licence without recording any reasons in writing as required by G.O. against the express recommendation of the Muncipal Health Officer and without consulting the Director of - - - Public Health as required by the orders of the Government in G.O.No. 4054,

P.H. dated 3-9-1940 is in itself bad in law, justice and equity and as such a nullity and secondly because the second resolution is on an application for permission for fresh installation of an electric motor which has nothing to do with the first resolution on an application for replacement of the oil engine and the said resolution was passed by overwhelming majority as out - of 8 members including the Chairman present, seven have voted for the - - resolution and even the Chairman did not participate. The total strength of the Council is 20.

We beg to add that the resolution of the Council at its Meeting held on 31-3-1953 is ultravires of the powers of the Council. In fact - the Council is bound by its own act of granting annual licence ever since the Municipality had come into existence and even under law this fact constitutes the best and conclusive evidence of the grant of the installation licence, because no running licence could have been granted without the grant of the installation licence and that what-ever might have been the initial discussion in the Council ultimately the resolution of the Council rejecting our - - application at the Meeting held on 31-3-1953 does not give any reasons for such rejection as required by the G.O. and under the G.O. in question, - - permission can be refused only if it would cause nuisance or it would be a source of danger to the life or property of the people living in the - - - neighbourhood. No such ground was even suggested by any Councillor even at the time of discussion. In any case, the said reasons cannot exist in a case like ours when we only ask for substitution of electric motor for oil engine, and the resolution of the Council rejecting permission for substituting electric motor for oil engine is liable to be set aside on this ground alone and if the same is done, it is unnecessary to consider the resolution of - the Council passed at its special meeting held on 25-4-1953.

After submitting so much about the legal and technical aspects of the question, we beg to submit that the action of the Municipality in refusing to grant us permission so far has landed us already into untold hardship and inconvenience in as much as large quantity of coffee seeds remain idle in our godown. The public in general and out customers in particular are - experiencing lot of inconvenience since 1st April 1953 owing to our - - -

8

inability to supply them coffee powder. Justice, equity and fairplay demand that our application should be considered favourably and the -- permission applied for should be granted to us as rightly resolved by the Council at its special meeting held on 25-4-1953.

In fine, we pray that the Municipality be directed to give effect to the resolution dated 25-4-1953 of the Council and to grant - the licence or permission applied for. We have not so far received - in writing any order from the Municipality and hence, we are not in a position to file any regular appeal and we beg to file this application without prejudice to our right of regular appeal, which we are sure - will be unnecessary as we feel we will get justice under this petition alone.

For which act of kindness and generosity,

Udipi, South Kanara.)
)
Dated. 9-5-1953. - -)

We remain,

Sir,

Yours faithfully.

For K. K. Shanbhogue & Sons,

Partner.

17/16.5. | ICF From Sri T. Anant Pai Udipi, Rr. d 11-5-53. Health (T)

Sub Licence - Udipi Municipality - Replacement of the 10 H.P oil engine in Laxmi Mills into electric motor - Grant of permission - Petition re.

DH 15/5

Memo no 26956/53-1T Heath d 15/5/53
The DPH is requested to report to the Govt in due course the action taken by him on the representation of the Proprietors, Laxmi Mills, Udipi, dated 9-5-53 addressed to him and relating to the Subject mentioned above

15-5-ICF

To. The DPH

14.5.53
NRP.
14-5-53

VR
15/5/53

From
The Director of Public Health,
Madras, Kilpauk.

To
The Secretary to Government,
Health Department, Madras.9.

28673

R.No.40688-3-Hyg(2)/53 Dated 21-5-53.

ASSISTANT SECRETARY 27 MAY 1953 DEPARTMENT

Sub: Licence-Udipi Municipality-Replacement of the 10 H.P. oil engine in Lakshmi Mills-Grant of permission.

Ref: Government Memorandum No.26956/53-1-T. Health Dated 15-5-53.

A detailed report has been called for from the Municipal Health Officer, Udipi, and his report is awaited. I shall forward a copy of my final orders in due course.

Yours faithfully,

for Director of Public Health, Madras.

ahp 22-5.

22553

Health (T)

The DPH's reply may be awaited till 20/6/53

VR 26/5/53

13 Health (T)

From the D.P.H. R.no 40688-3 Hyg(2)/53 dt 21 5/53

Sub: Licence - Udipi municipality - Replacement of the 10 H.P oil engine in Lakshmi Mills - Grant of permission

Memo no 2-6956/53-2 T Healh dt 22.6.53
The attention of the D P H is invited to Govt memo no 2-6956/53-1 T Health dt 15.5.53 relating to the subject mentioned above and he is requested to state when his final report to the Govt in the matter may be expected

To
The D P H

19.6.53

19-6-53

15

From
The Director of Public Health,
Madras.

To
The Secretary to Government
Health Department,
Fort St.George, Madras.

34848

R.No.40688-4-Hyg(2)/53 dated 26-6-53

Sir,

DEPUTY SECRETARY
27 JUN 1953
HEALTH DEPARTMENT

Sub: Licence - Udipi Municipality - Replacement of the 10 H.P. Oil Engine in Lakshmi Mills - Grant of Permission.

Ref: Government Memo.No.26956/53-2-T Health dated 22-6-53

The reply from the Municipal Health Officer, Udipi is still awaited. I shall forward my remarks to Government soon after his report is received.

Health (T)

Yours faithfully,

The receipt of the DPH's report may be awaited till 25/7/53.

for Director of Public Health, Madras.

MG. 27/6/53
VR 29/6/53

Health VI

Sub — Licence — Kadipi Municipality T(3)

Replacement of the 10 H.P. oil engine in Lakshmi Mills — Grant of permission.

— x —

Ref: From the D.P.H Rc No 40688-4 Hyg(2)/53, dated 26.6.53

— x —

Memo 26956/53-3.T Health dt 28/7/53

The D.P.H is requested to state whether the reply called for from the M.H.O, Kadipi, has since been received and, if so, when his final reply in the matter may be expected

To The D.P.H

19

From
Dr.K.S.Viswanathan,M.P.H(HARVARD)
Director of Public Health,
MADRAS,KILPAUK

To
The Secretary to Government,
Health Department,
FORT.ST.GEORGE, MADRAS

R.No.40688-6 HYG(2)/53 Dated 29-7-1953

41358

Sir,

DEPUTY SECRETARY
30 JUL 1953
HEALTH DEPARTMENT

Sub:-Licence - Udipi Municipality - Replacement of a 10 H.P. oil engine by a 10 H.P. Electric motor in the Laxmi Mills.- Grant of permission.
Ref:-Government Memorandum No.26956/53-1.T.Health dated 15-5-1953.

p9 ant

With reference to the Government-memorandum cited above, I furnish below a short summary of the case.

(i) The proprietors of Lakshmi mills applied to the Udipi Municipal Council for permission to replace the existing 10 H.P. oil engine by one of 10 H.P. Electric Motor for running a Coffee grinder. This was recommended by the Municipal Health Officer but the Municipal Council in its resolution No.16 dated 31-3-1953 refused to grant permission for the replacement. The main reason for refusal of permission is stated to be that a majority in the Council wanted to verify that the original installation of oil engine was authorised by competent authority and that its horse power was only 10 and that the party was unable to produce the same.

p14 of (N)

(ii) Be that as it may, the party put in a second application for the installation of a 10 H.P. Electric Motor in his mill. This was recommended by the Health Officer and the Council at its special meeting held on 25-4-1953 passed a resolution granting permission for the installation. Thereupon, the Municipal Commissioner, Udipi raised the question as to whether the resolution passed by the Municipal Council at its special meeting held on 25-4-1953 would be valid since the conditions in rule 8 in Schedule III of the District Municipalities Act were not satisfied. The Inspector of Municipal Councils and Local Boards has opined that this resolution could not be given effect to since it contravened the above rule.

p17 of (N)
p18 of (N)
p20 of (N)
p25 of (N)

(iii) The Proprietors of the mill have put in a petition to this Office for favourably considering their request.

p21 infra

2 My remarks on the two resolutions are as follows:

(i) Rule 8 in Schedule III of the District Municipalities Act lays down that "no resolution of the Council shall be modified..... within three months.. ... except at a meeting specially convened in that behalf and by a resolution of the Council supported by not less than one half of the sanctioned number of members". The Commissioner has reported that as per this rule a special meeting was held on 25-4-53 in which only 8 out of the 20 sanctioned strength of members were present. Since the resolution passed by the special meeting did not receive the support of 10 members of the Council, I agree with the Inspector of Municipal Councils and Local Boards that this resolution cannot be acted upon.

p.. of (N)

(ii) Regarding the resolution No.16 dated 31-3-1953, I am to state that it is not just on the part of the Council to have refused permission for the replacement. The party has said that he has been running his oil engine since several years. This has been corroborated by the Municipal Commissioner in his letter dated 2-5-1953. The Municipal Health Officer has reported that

p14 of (N)

p.. infra

(pto)

industrial areas have not been declared and reservation of residential areas is still in proposal stage. The case has therefore to be decided purely on merits. The installation of an electric motor in place of an oil engine is an improvement in the position and it should be encouraged. That the party was unable to produce the original order (many years back)-sanctioning the installation of the oil engine is not a reasonable ground to refuse permission for the replacement. In the circumstances, I consider that the resolution No.16 dated 31-3-1953 of the Municipal Council, Udipi needs cancellation. I therefore request that Government will be pleased to invoke the provisions contained in Section 252 of the District Municipalities Act and direct the Council to grant permission for the replacement.

3 The Municipal Office records relating to the case together with copies of (1) the petition of the party, (2) the Commissioner's letter dated 2-5-1953 and (3) the Endorsement dated 22-5-1953 of the Inspector of Municipal Councils and Local Boards, Madras are forwarded herewith.

DIRECTOR OF PUBLIC HEALTH
MADRAS

sm 29/7

Copy of Endorsement L.Dis.30684/53 dated 22-5-53 from the Inspector of Local Boards, Madras to The Director of Public Health.

Sub: Licence-Udipi Municipal council-replacement of 10 H.P. Oil Engine by an electric motor of same H.P. Council's resolutions.

The resolution passed by theCouncil in its ordinary meeting held on 31-3-53 and the resolution passed by it in a special meeting held on 25-4-53 relate to the same subject (viz.) grant of permission for the installation of a 10 H.P. electric motor. As the latter resolution modifies or cancels the previous one it should have been supported by not less than half the sanctioned strength as per rule 8 of the rules in schedule II to the Madras District Municipalities Act. Hence the resolution of the Municipal Council passed at its meeting on 25-4-53 cannot be given effect to.

(True copy)

Copy of letter R.O.C.No.C1-614/53 dated 2-5-53 from the Commissioner Udipi Municipality to The Director of Public Health, Madras.

Sub: LICENCE - Replacement of 10 H.P. oil Engine by an Electric Motor of the same H.P. - Council's Resolutions - instructions solicited.

I submit herewith the whole file of correspondence consisting of 24 pages and state as follows:-

The first application dated 5-2-1953 from M/s. K.K.Shanbhogue & Sons was for the replacement of the 10 H.P. oil engine by an Electric motor of the same H.P. The Municipal Health Officer recommended the grant of permission under Section 250 of the Madras District Municipalities Act, 1920, as under G.O.No.4054, P.H., dated 3-9-1940 such permission should be granted as a matter of course. But the Council in its resolution No.16 dated 31-3-1953 rejected the grant of licence on the ground - as could be made out from the discussion - that ~~fai~~ the applicants not only failed to produce the licence granted for the installation of the oil Engine which is now sought to be replaced but also expressed their inability to produce it. Despite the fact that the applicants had obtained annual licences under section 249 of the Madras District Municipalities Act, 1920, the majority in theCouncil wanted to satisfy itself that the installation of the oil Engine was authorised by the Competent Authority and its H.P. was 10. Whatever be the grounds, the Council, in my opinion, ought to have referred the matter to you as required by the instructions in the G.O. above referred to, if it differed from the opinion of the Municipal Health Officer, as it evidently did in this case.

2. When matters stood thus, the applicants on 1-4-1953, i.e. on the next day of the Council's rejection of the licence, applied for permission to instal a fresh an Electric motor of 10 H.P. and the Municipal Health Officer, to be consistent, recommended the grant of permission for the fresh installation of the Electric motor Whether replacement or fresh installation it made no difference

unless the fresh installation in effect meant an installation in addition to the existing oil engine. Hence the application dated 1-4-1953 for fresh installation of the Electric motor was placed before the Special meeting of the Municipal Council held on 25-4-1953, convened under rule 8 of schedule III of the Madras District Municipalities Act, 1920, as no resolution of the Council can be modified or cancelled within 3 months after its passing. At this meeting the Council in which only 8 out of 20 councillors were present, resolved that the licence be granted as recommended by the Office, the Chairman not participating, and this resolution in effect cancelled the resolution rejecting the licence, passed 25 days back. In as much as the resolution passed, at the Special meeting did not receive the support of 10 members (i.e.50% of the sanctioned strength on the council), it becomes, in my opinion, ineffective and cannot be acted upon. I solicit in the circumstances instructions as to whether or not the resolution of the Council passed at its meeting held on 25-4-1953 may be given effect to.

(True copy)

Endorsement of the Chairman, Municipal Council, Udipi, dated 2-5-53. - Forwarded.

DIRECTOR OF PUBLIC HEALTH, MADRAS.

Same as at Ms-5 of 1952

4043/52

From

K. K. Shanbhogue & Sons,

Proprietors, Laxmi Mills,

U D I P I.

To

The Director of Public Health,

M A D R A S.

Sir,

Ref:- Municipal File No. R.O.C.G. 614/53 (2-5-53).

- - - - -

We may be permitted to submit the following facts for your sympathetic consideration and favourable orders:-

The Oil Engine of 10 H.P. was installed for coffee grinding in - - the premises of Door No. 10-1-127 (S.No. 109/12A of Shivalli Village) by our father late Sri. K. K. Shanbhogue under a licence obtained under Sec. 194 - of the Madras Local Boards Act, 1920 from the defunct Taluk Board of Udipi - or the District Board of South Kanara. Udipi was constituted into a Municipality in the year 1935 and since then our father till his death in 1942 and we - - subsequently have been obtaining annual licences under Sec. 249 of the District Municipalities Act, 1920 every year for the working of the said engine of - - 10 H.P. without any objection raised by the Municipality.

In view of the orders issued in G.O.No. 4054 (Appendix 2 (a)) P.H. dated 3rd September 1940, we decided to replace the Oil engine by an electric Motor of the same horse power, viz., 10 H.P. and applied on 5-2-1953 for - - permission under Sec. 250 of the Madras District Municipalities Act 1920. - - The Municipal Health Officer inspected the site and recommended the grant of permission applied for as under G.O. such permission has to be granted as a matter of course. The application came up before the Council for consideration at its meeting held on 31-3-1953. At the Council Meeting, one of the - - - Councillors stated that he wanted that the applicant should produce the - - - original installation licence. We however urged that we were not in - - - possession of the original installation licence, that the old records of our

father had been either lost or moth-eaten, that we could not even get a copy from the District Board Office inspite of our best efforts, that it may be that the said licence was produced for the grant of the annual licence by - the Municipality originally and that it is either not returned to us or - - mislaid and that the fact that the Municipality has been granting us running licence every year ever since the beginning is the best evidence of the - - grant of the installation licence. Though most of the Councillors were - satified that the grounds urged by us for nonproduction of the original - - installation licence were true and genuine, when the matter was actually - put to vote on account of the stiffness of the said one Councillor, the - application of the Petitioner was rejected by a majority of one vote, because, the voting went on, on party basis and the most of the members belonging - to the party of the member who raised the above objection were constrained to vote with him despite their feeling that the applicant was entitled to the licence applied for by him.

Notwithstanding the said rejection, on 1-4-1953 we again applied afresh for the grant of permission for the installation of an electric motor of 10 H.P. in the place of the oil engine which we proposed to dismantle,- because, we bona fide believed that once the oil engine is dismantled, the installation of electric motor would for all practical purposes be a fresh installation. This application was also recommended by the Municipal - - Health Officer and it came up for consideration of the Council at its - - special meeting held on 25-4-1953. The Council in which 8 members - - - including the Chairman were present was pleased to grant the licence of - ourse, the Chairman not participating. But, so far no licence has been issued to us and it is said that this delay is due to the fact that it is doubted that the resolution of the Council at its special meeting held on 25-4-1953 was not valid as it did not receive the support of 10 members of the Council. We are advised that this view is not correct firstly because, the first resolution of the Council rejecting the licence without recording any reasons in writing as required by G.O. against the express recommendation of the Muncipal Health Officer and without consulting the Director of - - - Public Health as required by the orders of the Government in G.O.No. 4054,

P.H. dated 3-9-1940 is in itself bad in law, justice and equity and as such a nullity and secondly because the second resolution is on an application for permission for fresh installation of an electric motor which has nothing to do with the first resolution on an application for replacement of the oil engine and the said resolution was passed by overwhelming majority as out - of 8 members including the Chairman present, seven have voted for the - - resolution and even the Chairman did not participate. The total strength of the Council is 20.

We beg to add that the resolution of the Council at its Meeting held on 31-3-1953 is ultravires of the powers of the Council. In fact - the Council is bound by its own act of granting annual licence ever since the Municipality had come into existence and even under law this fact constitutes the best and conclusive evidence of the grant of the installation licence, because no running licence could have been granted without the grant of the installation licence and that what-ever might have been the initial discussion in the Council ultimately the resolution of the Council rejecting our - - application at the Meeting held on 31-3-1953 does not give any reasons for such rejection as required by the G.O. and under the G.O. in question, - - permission can be refused only if it would cause nuisance or it would be a source of danger to the life or property of the people living in the - - - neighbourhood. No such ground was even suggested by any Councillor even at the time of discussion. In any case, the said reasons cannot exist in a case like ours when we only ask for substitution of electric motor for oil engine, and the resolution of the Council rejecting permission for substituting electric motor for oil engine is liable to be set aside on this ground alone and if the same is done, it is unnecessary to consider the resolution of - the Council passed at its special meeting held on 25-4-1953.

After submitting so much about the legal and technical aspects of the question, we beg to submit that the action of the Municipality in refusing to grant us permission so far as landed us already into untold hardship and inconvenience in as much as large quantity of coffee seeds remain idle in our godown. The public in general and out customers in particular are - experiencing lot of inconvenience since 1st April 1953 owing to our - - -

28

inability to supply them coffee powder. Justice, equity and fairplay demand that our application should be considered favourably and the -- permission applied for should be granted to us as rightly resolved by the Council at its special meeting held on 25-4-1953.

In fine, we pray that the Municipality be directed to give effect to the resolution dated 25-4-1953 of the Council and to grant - the licence or permission applied for. We have not so far received - in writing any order from the Municipality and hence, we are not in a position to file any regular appeal and we beg to file this application without prejudice to our right of regular appeal, which we are sure,- will be unnecessary as we feel we will get justice under this petition alone.

For which act of kindness and generosity,

Udipi, South Kanara.)
)
Dated. 9-5-1953. - -)

We remain,

Sir,

Yours faithfully.

For K. K. Shanbhogue & Sons,

K. S. Shanbhag
Partner.

Copy submitted to
1. The Inspector of Municipal Councils and Local Boards, Madras
2. Sri. T. A. Pai M. L. A. Udipi.

Sub. Licence - Udipi Municipality - Replacement of a 10 H.P. oil engine by a 10 H.P. electric motor in Lakshmi Mills - Refusal of permission - Resolution no 16 dated 31-3-52 - Cancellation of - Show cause notice. Issued.

Ref: From Sri T. Anant Pai, M.L.A. Udipi, petition dt 18/5/53

-- From the D.P.H Rc. No. 40688/6 Hyg(2)/53, dt 29-7-53

Order (Ms) 3393. Health, dt 16.9.53

The proprietors of the Lakshmi Mills, Udipi, applied to the Udipi Municipal Council for permission to replace the existing 10 H.P. oil engine by one of 10 H.P. electric motor for running a coffee grinder. The application was recommended by the Municipal Health officer, but the Municipal Council in its resolution no 16 dated 31.3.53 refused to grant permission on the ground that applicants were not able to produce the licence granted to them in the first instance for the installation of the oil engine.

Subsequent to the refusal of permission by the Council, the proprietors put in a second application for [the installation] of an electric motor of the same h.p. in their mill. This application was also recommended by the M.Ho. The M.C. at its special meeting held on 25-4-53 resolved to grant permission for the said installation. Under rule 8 of

P.T.O

Schedule III to the M.D.M Act, no resolution of the Council shall be modified or cancelled within three months after the passing thereof except at a meeting specially Convened in that behalf and by a resolution of the Council supported by not less than one half of the sanctioned number of members [It is found that] the special meeting of the Mn.cl Convened on 25.4.53 wherein the previous resolution was altogether ~~Cancelled~~ modified did not conform to the above rule. In as much as the correct procedure was not followed, the second resolution dt 25.4.53 modifying the earlier resolution dt 31.3.53 is not in order and therefore it is ineffective.

p 525 of the Madras Code

p 20 of (IV)

2. The Govt observe that the resolution No 16 dated 31.3.53 of the Nidipi Municipal Council ~~is not an order~~ also does not meet the ends of justice for the following reasons—

p 14 of (IV)

(1) The application of the Proprietors of the mill for replacement of the existing oil engine by one of electric motor should, if it had been recommended by the M.Ho (as was the case) will have been granted as a matter of course with ref. to the orders in parag. 2 (1) (b) of GO No 4054 PH dt 3.9.40. The ~~mere~~ fact that the applicants had obtained annual licences under Sec 249 of the M.D.M Act [~~should~~ and had been running the mill for a long time past] ~~have Convinced the members of the Mn.cl Council that the grant of a licence in the first instance was a fait accompli and bona fide~~] points to the same conclusion

(W) p 2

p 2 ra 2 (ii) PH 19-20 of

(2) The installation of an electric motor in the place of an oil engine ~~would~~

para 2(ii) p 20 of

p 14 of (N)

would only improve the position by creating less noise and nuisance

3. The Govt consider that for the above reasons the resolution of the Mn. Cl no 16 dated 31.3.53 deserves to be cancelled ~~accordingly the Govt proposes to direct the Kodipi Mn. Cl under Sec 252 of the M.D.M Act, 1920, to cancel its resolution no 16 dated 31.3.53 after giving an opportunity to the Mn. Cl to show Cause against the action proposed.~~

The Kodipi Mn. Cl is accordingly called upon to show Cause within a month from the date of receipt of this order why action should not be taken by the Govt under Section 252 of the Act as proposed above. If a reply is not received within the time specified it will be presumed that the Cl has no explanation to offer and further action will be taken on the materials available

SAS
29/8/53

28/8/53
NRP
28.8.53

To the Commr of Kodipi (thro the Chrc) (with enclosure by R.P)

Copy forwarded by RP.

Copy to DP. H (N) ... DLB (Secl)

R.O.C.No.C1-614/53. VERY URGENT. Municipal Office, Udipi,
Dated 27-9-1953.

From
Sri U. S. Nayak,
Chairman,
Municipal Council, UDIPI.

To
The Secretary to Government,
Health Department,
Fort St. George, MADRAS.

****

Sir,

53140

SECRETARY 30 SEP 1953 HEALTH DEPARTMENT

Subject:- LICENCE - Udipi Municipality - Replacement of 10 Horse power Oil Engine by a 10 Horse Power Electri Motor in Lakshm Mills -Refusal of permission - Resolution No.16 dated 31-3-52 - Cancellation of - Show Cause Notice.

- - - -

Ref:- G.O.Ms.No.3393, Health, dated 16-9-1953.

- - - -

The G.O. above referred to discloses that Sri T.Anant Pai, M.L.A., Udipi, has addressed a letter dated 16-5-1953 on the above subject. I consider it necessary that the Council should be in possession of the contents of his letter before explaining its position with regard to its Resolution No.16 dated 31-3-1953. I will therefore feel highly obliged, if you are so good as to furnish me with a copy of the letter dated 16-5-1953 addressed to the Government by Sri T.Anant Pai, M.L.A., Udipi.

Chairman,
Municipal Council, Udipi.

Bks.

35 Health T(3)

Sub. Licence – Udipi Municipality – Replacement of 10 H.P. oil engine by a 10 H.P. electric motor in Lakshmi Mills Refusal of permission – Resolution no 16 dt 31-3-52 – Cancellation of Show Cause notice

P.tg

Ref: from the CMC Udipi, Roc no C1–614/53 dt 27-9-53

Memo

A copy of the letter dt 11-5-53 from From Sri T. Anant Pai M.L.A Udipi together with copies of its enclosures are herewith enclosed.

To the CMC Udipi (with a copy of Mr 1-8-ct)

8/5/1x/53. NRP 5-10-53

I am afraid ~~Copies~~ cannot be

36

Queen ~~Colour~~ thanks Mr Earl- memo explains his case fully further contact to give advice

S/C
6/10/53

DS's remarks above

Subd. ~~Amended~~ draft memo as Subd for approval.

for orders as to O or to M(H)

S/C
6/10/53

6/X/53
NRP
6.10.53

Revised Draft 37/Health

T(3)

Sub Licence - Udipi Municipality Replacement of 10 HP oil Engine by a 10 HP electric motor in Lakshmi Mills Refusal of permission — Resolution no 16 dt 31.3.52 — Cancellation of Show cause notice - Reply to

Ref: from the CMC Udipi, Lr.oc No. C1-014/53, dt 27-9-53

Memo 53140/53.1.T Health, dt 6.10.53

The Govt Consider that it is not necessary that the Council should be in possession of the contents of the letter of Sri T. Anant Pai M.L.A. Udipi and the Govt order explains the case fully for the Council to give a reply

To the Chairman Municipal Council Udipi.

6/X/53 NRP 6.10.53.

6/10

Health
T(3)

Sub - Licence - Udipi Municipality
Replacement of a 10 H.P. oil engine
by a 10 H.P. Electric motor in
Lakshmi Mills - Grant of permission

Ref: From Sri T. Anant Pai, M.L.A., Udipi,
petition dt 11/5/53
Govt Memo No 26956/53-1-T Health
dt 15/5/53
From the D.P.H Rc No. 40688/6 Hyg(2)/53
dt 29.7.53

The letter from Sri T. Anant Pai, M.L.A
Udipi at page 1 cf, the memo at page
9 cf and the D.P.H's reply at pp 19-20 cf
may be perused

2 The facts of the case are set out
briefly in parag 1 of the D.P.H's letter
at p 19 cf. The Dr has discussed
in parag 2 of his letter how far
the two resolutions of the M.C. in
the matter are ~~correct~~ valid or not.

3 At its meeting held on 31.3.53 the
M.C. Udipi refused to grant permission
to the Proprietors of the Lakshmi Mills
for the replacement of a 10 H.P. oil engine
by a 10 H.P. electric motor. No reasons
have been assigned for refusing permission
But it is stated that its refusal was
because of the fact that
petitioner had failed to produce the
licence granted in the first instance
for the installation of
oil engine which is sought to be
replaced by him. The petitioners
application for permission, should, if
it had been recommended by the
M.H.O. (as was the case)
have been granted as a
matter of course with reference to orders

in Go No 4054 P.H dated 3.9.40. But, the majority of members of admittedly the Mt Cl wanted to verify the original order granting permission for the installation sufficient to the recommendation of the M.H.O. in this case before it passed the above resolution. This is one defect

Secondly, the mere fact that the petitioner has been renewed the running licence year after year by the Mt Comm. and that the machinery has been running all these several years should have convinced the mt Councillors that the grant of a licence to the Proprietors originally was a fait accompli and bona fide. Secondly, the installation of an electric motor in the place of an oil engine would only improve the position — such by causing less noise and nuisance to the people in the neighbourhood. For the above reasons the D.P.H considers that the resolution No 16 of the Mt Cl dated 31.3.53 is not in order and hence recommends its Cancellation. He requests the Govt therefore, to invoke the provisions of Sec 252 of the M.D.M. Act and direct the mt Cl to grant permission for the replacement of the machinery. If is for orders whether the D.P.H's recommendation is to be accepted and a show cause notice may have to be issued to the Udipi Mt Cl

3 As regards the resolution No 1 dated 25-4-53 passed by the Udipi Mt Cl at its special meeting on 25-4-53 the Mt Comm, Udipi has himself raised a doubt whether that resolution cancelling the earlier resolution dt 31-3-53 is in order. The Insp of Mt Cls & Local Boards

and the D.T.P. hold the view that as the rules laid down in Schedule III of the M.D.M. Act have not been observed, the resolution is not valid and cannot be acted upon. ~~Since the earlier resolution of the M.C. remains unconcelled in view of the fact that the subsequent resolution has not been validly passed, action will have to be taken now for the Cancellation of the resolution no 16, dt 31.3.53~~

~~L.A and Legal (Opn) may see the for remarks on the action proposed to be taken in this case.~~

5/8/53 As the M.C. council itself is willing to grant the permission it seems sufficient if the council is asked to cancel its resolution dated 31-3-53 and to grant the permission applied for. As the resolution dated 25-4-53 is ineffective and as three month's time has elpased since the passing of the first resolution (dated 31-3-53) the M.C. council can now cancel the resolution by a simple majority

L.A. and Legal (Opinion) may see for remarks before circulation.

NRP
6-8-53

A
SAS
7853

SAS
7853

L.A. / Legal (Opn)

Health No
6956/53.4.T Health
7-8-53

L.A. Deptt (A)

Please see the note of Health Deptt from page 1 ante, ~~the proposal of that Deptt at A above may be agreed to~~ in this Deptt.

~~The file may be passed on to Legal (Opinion)~~ It is doubtful whether it will be

7/8/53

4.

Correct to say that the municipal Council is willing to grant the permission cancelling its resolution of 31.3.53. The ineffective resolution of 25.4.53. was passed at a meeting where only eight members were present and the Chairman who presided did not participate. Attention is invited to the resolution and the letter of some Councillors at pp 20-22 of (N). It is not therefore likely that the Council will agree to grant permission if it is advised to do so. The D.P.H. has considered that there is p 20 c/n the cancellation of the resolution No 16 of 31.3.53. and suggested action under Sec 252 of the M. & M. Act. It seems appropriate to take action under Sec. 252 of the Act.

The file may be passed on to Legal (Opn) Wo

10.8.53.

Legal (Opinions) Department

There is no objection to the Government taking action under section 252, as suggested by D.H.D. above.

Health

P.T.O

T

5

Health (T)

Please see the notes of the L.A. and Legal Depts on pages 3 – 4 ante.
A draft order is submitted below for approval.

28/8/53. Legal may see two for scrutiny before circulation

28.8.53

29853

Leque (Sch)

Some alterations have been indicated in pencil on the draft for consideration by Health.

8.9.53.

Health

Health
T(3)

Please see the note of Legal Dept above. The alterations indicated in pencil by Legal in the draft below may be accepted.

May be circulated to M(H) for approval before issue. The draft below is self-explanatory

11/9/53

11-9-53

S A Sobhan
11 853

M(H)

Health no
2956/53.5-T Health
29.8.53

(DS on CL)

ASSISTANT SECRETARY
14093
1 SEP 1953
LEGAL DEPARTMENT

Legal a.o. 14093/B-1
8/9/B

DEPUTY SECRETARY
19531
10 SEP 1953
HEALTH DEPARTMENT

SECRETARY
15 SEP 1953
HEALTH DEPARTMENT